

MEMORANDUM

JULY 28, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: LINDA BOURQUE, ASSISTANT DIRECTOR FOR
NEIGHBORHOOD PLANNING AND ZONING
RICHARD GIBBONS, SENIOR PLANNER
DANIEL J. BARRY, LAND USE COUNSEL

SUBJECT: FAMILY DAY CARE HOME ZONING AMENDMENT

Doc 5076
ADOPTED
7/28/88

EXECUTIVE

SUMMARY:

Request authorization for the Director to petition the Zoning Commission to amend the Boston Zoning Code to allow Family Day Care Homes for the care of up to six children in all zoning districts where residential uses are allowed.

On July 14, 1988 the staff presented to the Authority a report on day care in Boston and recommendations for your consideration on two separate zoning proposals to provide for increased day care facilities. (attached) Both of these proposals were taken under advisement.

The first of these proposals is to amend the Zoning Code to allow Family Day Care Homes in all districts that allow residential uses. A Family Day Care Home as defined by the Massachusetts Office for Children is "Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age, or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence." Currently, the Boston Zoning Code recognizes larger day care centers of up to 60 children and makes these centers a conditional use in most residential districts. It does not recognize explicitly this smaller non-institutional Family Day Care Home.

The Massachusetts Executive Office of Human Services' Office for Children regulates the operation of the Family Day Care Homes through the provisions of Chapter 28A of the Massachusetts General Laws. The regulations specify, among other things, the number of children allowed, qualifications needed by the providers, and the amount of indoor and outdoor space required. They insist that certain health and safety standards be maintained. In 1987, Chapter 40A of the Massachusetts General Laws (the state zoning act from which the City of Boston is exempt) was amended to make a "Family Day Care Home" an allowed use unless a city or town specifically prohibits that use. The City of Boston has no comparable ordinance and we propose an amendment to the Code that would make "Family Day Care Home" an accessory use in all districts which allow residential use. It should be emphasized that this is a "residential" use and will be limited to no more than six children.

As of today there are over 750 licensed Family Day Care Homes in the city. Their locations are shown in Appendix A of the attached report. The Office for Children estimates that there are an additional 350 homes that are operating without benefit of license, inspections, or supervision, and it is in the process of bringing them into compliance and licensing them.

Along with making this an allowed use in residential districts, the amendment would require compliance with regulations published by the Office for Children. This would ensure that the premises are inspected for health and safety reasons, that a Massachusetts Criminal Offender Review Information (CORI) check is done, references are required, and that the home is subject to follow up visits by that Office for Children.

The second proposal on July 14, 1988 was to consider day care regulations for the Economic Development Areas of the Downtown IPOD, the Midtown Cultural District, and Authority owned parcels in accordance with the attached proposed regulations. In summary, these regulations would require for projects in these areas over 50,000 square feet the provision of 2% of the FAR or an equivalent dollar contribution directly to the construction of day care slots. The four options include: construction of an on-site facility or construction of a near-site facility, either of which may be in consortium with other developers to meet their collective needs, provision of an off-site facility in one of Boston residential neighborhoods, or contribution to existing day care facilities for expansion. Low and moderate income employees and city residents will receive priority to the extent possible.

Staff believes that now that these regulations have been proposed, there should be a wide community review process, and we would like to bring the regulations back to the Authority Board for a public hearing at the second Board meeting in September.

A recommended vote on the Family Day Care Home amendment follows:

VOTED: That the Director is authorized to petition the Zoning Commission to adopt an amendment to the Boston Zoning Code which would make "Family Day Care Home" and allowed use in all districts which allow residential uses in substantial accord with the petition submitted to the Authority on July 14, and July 28, 1988.

July 28, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY
AND STEPHEN COYLE, DIRECTOR

FROM: LINDA S. BOURQUE, ASSISTANT DIRECTOR FOR
NEIGHBORHOOD PLANNING AND ZONING
RICHARD M. GIBBONS, SENIOR PLANNER
DANIEL J. BARRY, LAND USE COUNSEL

SUBJECT: FAMILY DAY CARE HOME ZONING AMENDMENT REPORT ON DAY CARE
IN BOSTON SUBMITTED TO THE AUTHORITY JULY 14, 1988

The issue of day care for pre-school age children is growing in importance across this nation, as evidenced by Senator Christopher Dodd's sponsorship of a \$2.5 billion dollar appropriation in the Congress to provide help in this area. The traditional view that families are supported solely by their fathers while the mothers remain home to care for the children is no longer valid. Recent statistics published by the U.S. Department of Labor show that only one family in ten conforms to that image. The number of working women who have pre-school age children has quadrupled over the last thirty years. It is estimated by the Massachusetts Office for Children that there are approximately 51,000 women in this state not in the workforce because they cannot find nor finance child care.

The Massachusetts Department of Human Services' Office for Children published a comprehensive report in June, 1988 entitled "The Economics of Child Care in Massachusetts," and its findings are enlightening. In 1987 the state spent \$101,000,000 for day care assistance. This figure represents an increase of 51% since 1985. There are approximately 200,000 children under the age of six who attend day care and this figure is expected to increase 23% by 1995. The average cost per child is \$3,000 per year but 25% of the parents spend nearly \$4,000 annually.

In 1987 nearly 28,000 children received child care through the Department of Social Services day care contracts, and 73,000 others were supported by Department of Welfare vouchers. There are more than 59,000 children enlisted in those programs whose families have incomes below 71% of the state's median income and nearly 42% receive a state subsidy.

The private sector's response to the issue of day care has been stunningly indifferent. The report suggests that of 140,000 private companies registered in the state, only 101 provide any kind of child care support. In other words, for every 10,000 companies in the state just seven are involved with child care. The enormous gap between the need and the supply is bound to widen unless the private sector acts.

The report notes that companies can reap substantial and immediate benefits by participating in day care. Improved productivity, work quality and morale, and diminished absenteeism have been observed in private economic surveys. The rate of employee turnover drops dramatically, and this saves companies training and recruiting costs. A company will have better success in attracting employees when it offers day care. This is of great value in a city like Boston where companies are finding it difficult to fill clerical, technical and administrative positions. A company's public image is enhanced; as the chairman of the Board of Corning Glass has noted, "Child Care is one of those small pockets of excellence by which corporations and their people are judged."

Today in the City of Boston there are only 550 child care slots operated by private employers. Of the city's 30 largest companies, which employ 80,000 people, only seven offer child care benefits of any kind. But this situation is changing, as evidenced by current commitments made by private companies as well as the city to promote and establish quality day care

City of Boston Child Day Care Centers

The Mayor's Women's Commission currently is developing plans to establish a comprehensive Child Care Center to be located in City Hall. There will be slots for approximately 43 infants, toddlers and pre-schoolers. This number is within a range such that each child can receive personalized care and attention, and experience a genuine feeling of bonding with adults. All city employees will be eligible to participate and they will be selected by lottery. The majority of slots will be dedicated toward low and middle income parents, hours will be flexible, and a sliding fee scale will be used. In addition, the city will contract with the Child Care Resource Center, which will provide additional sources of child care for the employees.

The BRA also is working with private developers to create a consortium of organizations that will implement a program of day care for workers at the Charlestown Navy Yard. It is anticipated that a 3,500 square foot facility with the capability to care for approximately 40 children will be in operation before the end of this year.

In addition to its on-site day care centers, the city is undertaking other initiatives to address this issue. The following describes a proposed zoning amendment for small Family Day Care Homes, and day care requirements and regulations for Economic Development Areas, the Midtown Cultural District, and disposition Authority owned disposition of parcels.

Family Day Care Home

The Mayor's Women's Commission recently requested that the Authority develop a zoning amendment that would allow Family Day Care Homes in residential areas in an effort to promote child care.

The Boston Zoning Code recognizes larger day care centers of up to 60 children and makes these centers a conditional use in most residential districts. It does not recognize the small non-institutional Family Day Care Home, which is defined by the state as, "Any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence."

The Massachusetts Executive Office of Human Services' Office For Children regulates the operation of these Family Day Care Homes through the provisions of Chapter 28A of the Massachusetts General Laws. The regulations specify, among other things, the number of children allowed, qualifications needed by the providers, and the amount of indoor and outdoor space required. They insist that certain health and safety standards be maintained. In 1987, Chapter 40A of the Massachusetts General Laws (the state zoning act from which the City of Boston is exempt) was amended to make a "Family Day Care Home" an allowed use unless a city or town specifically prohibits that use. The City of Boston has no comparable ordinance and we propose an amendment to the Code that would make "Family Day Care Home" an accessory use in all districts which allow residential use. It should be emphasized that this is a "residential" use and will be limited to no more than six children.

As of today there are over 750 licensed Family Day Care Homes in the city. Their locations are shown in Appendix A. The Office for Children estimates that there are an additional 350 homes that are operating without benefit of license, inspection, or supervision, and it is in the process of bringing them into compliance and licensing them.

Along with making this an allowed use in residential districts, the amendment would require compliance with regulations published by the Office for Children. This would ensure that the premises are inspected for health and safety reasons, that a Massachusetts Criminal Offender Review Information (CORI) check is done, references are required, and that the home is subject to follow up visits by that Office for Children.

Zoning Provisions and Regulations for Downtown Development

The city also is contributing to the creation of more day care through zoning provisions and the Authority's development review of major downtown projects. We are proposing that within Economic Development Areas (EDAs) established through the Downtown Interim Zoning Plan, within the Midtown Cultural District, and on Authority owned parcels any project over 50,000 square feet be required to provide

day care in accordance with the proposed regulations discussed below. Currently, within the Economic Development Areas, which areas include the North Station, South Station and Kingston/Bedford Streets area, incentive height and FAR bonuses already may be granted to a developer who makes provisions for family day care.

The same requirement over a 50,000 square feet threshold also is proposed for the Midtown Cultural District, except within the residential Bay Village Edge. On-site day care centers would not be counted in the calculation of a projects density up to an FAR of 1. In addition, outside of any Planned Development Areas (PDAs) in the Midtown Cultural District, if the day care contribution is over 3,500 square feet or an equivalent dollar contribution, an incentive FAR also may be granted.

The Authority also requires that day care be provided for any development greater than 50,000 square feet on an Authority disposition parcel.

In all three cases where day care is required it must be 2% of the FAR or the contribution of the dollar equivalent of the 2% through one of the options in the proposed regulations.

It is the administration's philosophy, as articulated by the Women's Commission, that any day care program provided by employers should be flexible and include a variety of options to be considered by decision makers in order to respond to the needs of employees and the child care community and provide the best quality day care. Simply making a dollar contribution to a general fund or building the largest physical facility are not necessarily the most productive contributions.

This is consistent with provisions of the proposed state legislation which offers a variety of options for day care contributions. This legislation (House, No.5374) was recommended to the House of Representatives on April 6, 1988 and recently was approved by the House (Appendix C). If enacted, it would require that all commercial or industrial development exceeding 50,000 square feet provide one of several options for the generation of day care facilities. It requires that the size of the day care facility or financial contribution be based on 2% of the gross floor area of the development project. It also gives priority to low and moderate income employees and community residents to receive the day care benefits.

This legislation is pending and would supercede any city zoning incentives or requirements and regulations. Staff therefore feels that it is appropriate, at this time, to apply the proposed Authority regulations to limited Downtown development areas and major disposition parcels, and not to include the proposed state provision for a child care linkage fund.

We are therefore proposing regulations consistent with this approach to apply to EDAs, the Midtown Cultural District, and BRA disposition parcels where day care requirements apply. The regulations

include several initiatives that a developer can combine to provide a quality day care program. The initiatives include: construction of an on-site facility or construction of a near-site facility, either of which may be in consortium with other developers to meet their collective needs, provision of an off-site facility, in one of Boston residential neighborhoods, or contribution to existing day care facilities for expansion. Low and moderate income employees and city residents will receive priority to the extent possible.

To implement such provisions a developer must submit a day care plan to the Authority. The Authority would submit the plan to the Mayor's Women's Commission and the Mayor's Office of Jobs and Community Services (OJCS) for their recommendations. After receiving these recommendations the Authority will hold a public hearing prior to its final approval of the plan.

Staff has worked with the Mayor's Women's Commission and (OJCS), believes that the above programs are important steps in meeting the critical need for quality day care facilities in Boston.

Current Status of Day Care Provisions in Development Projects

Thus far, guidelines for various disposition parcels have included a requirement that child care be a component of developments of North Station, Park Square, the South End, Lowell Square, the Kingston-Bedford garage site, and Parcel 18 in Roxbury.

The Developer's Kit issued in May 1986 for Lowell Square included a requirement for a child care center consistent with Office for Children regulations. Each of the four proposals currently being considered includes approximately 2,500 square feet of space for an on-site child care center. One proposal also includes a child care center located with the off-site affordable housing in Dorchester. The Parcel to Parcel Linkage 1 program, Kingston-Bedford/Parcel 18, which seeks to attract developers interested in city-owned land downtown to also develop in Roxbury, included a substantial community benefits program. Columbia Plaza Associates, the team of Asian-American, Black and Hispanic entrepreneurs which was selected to work with the City, Chinatown and Roxbury residents to develop the two sites, is required to submit a child care plan. CPA has just begun working with a committee of City officials and community residents to formulate the community benefits package. Early discussions have involved not only provision of space, but also training for child care workers and funding for operations.

Parcel to Parcel Linkage 2, Park Square and Transitional Housing, requires that interested developers submit proposals for housing at Park Square and for transitional housing, as well as other residential units, at a South End site. A child care facility is required at each location. Four developers submitted proposals in November of 1987. One of the criteria by which they will be evaluated is the extent to which proposals incorporate mechanisms to help fund child care, job training, health care, and legal services for women in the transitional housing program.

Guidelines to develop a City-owned lot at North Station as part of a new or renovated arena also require that proposals include a child care facility. The City has designated Delaware North as the developer of a new arena and adjacent City-owned parcels. Delaware North has indicated that it will comply with the child care guidelines set forth for the project.

In terms of BRA review of privately-initiated development projects, a child care facility within the Prudential Center was recently approved. An amendment to the Prudential Chapter 121A Report was made to allow Prudential to lease 6,042 square feet at the 1010 Huntington Avenue office building to the Bright Horizons Children's Centers, Inc. for use as a child care center. Up to 75 percent of total enrollment in the facility will be for Boston residents with the remainder limited to the children of non-resident employees within the project. The center was designed by Steffian Bradley Associates, Inc. to accommodate 70 children between the ages of three months and five years old. Approximately 20 percent of the spaces will be made available to low and moderate income families and will be coordinated with AFDC through the Child Care Research Center. Outdoor areas adjacent to the 101 Huntington Avenue building will be utilized as an infant outdoor rest area and play area for toddlers, respectively. Both of these areas will be appropriately fenced and used exclusively in connection with the child care center. It is the administration's philosophy, as articulated by the Women's Commission, that any day care program provided by employers should be flexible and include a variety of options to be considered by the decision makers in order to respond to the diverse needs of employees and the child care community and provide the best quality day care.

Text Amendment Application No.
Boston Redevelopment Authority
Day Care Center and Family
Day Care Home

TO THE ZONING COMMISSION OF THE CITY OF BOSTON:

The Boston Redevelopment Authority hereby petitions to amend the text of the Boston Zoning Code, as established under Chapter 665 of the Acts of 1956 as amended, as follows:

1. By striking out, in clause 11A of Section 2-1, the number (11A) and by inserting in place thereof the following number:

(11B)

2. By inserting, after clause (11) of Section 2-1, the following definition:

(11A) "Day care center", any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage under seven years of age, or under sixteen years of age if such children are children with special needs, as defined in MASS. GEN. LAWS ANN. ch. 28A, §9 (West), for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.

3. By inserting after clause (19) of Section 2-1, the following definition:

(19A) "Family day care home", any dwelling unit which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children are children with special needs, as defined in MASS. GEN. LAWS ANN. ch. 28A, §9 (West); provided, however in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the dwelling unit. Family day care home shall not mean a dwelling unit used for an informal

cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

4. By inserting, after Use Item 86 of Table A of Section 8-7, the following use item and series of letters and symbols:

87 As an accessory use not subject to
Article 10, family day care home

A A A A A C C C

Petitioner: Boston Redevelopment Authority

By: Stephen Coyle, Director

Address: Boston City Hall, 9th Floor
Boston, MA 02201

Telephone: 722-4300, ext. 404

Date: _____

BOSTON REDEVELOPMENT AUTHORITY
CHILD AND FAMILY DAY CARE PROVISION REGULATIONS
JULY , 1988

Section 1: Statement of Purpose

The purpose of these regulations is to mitigate the impacts of large-scale development on the availability of and demand for child and family day care services in the City of Boston; to address the serious emergency that exists with respect to the shortage of quality and affordable child and family day care in Boston, especially for low- and moderate-income households, in that it is improbable that factors inhibiting the supply of child and family day care will be mitigated by the market place without government intervention; to provide for a variety of child and family day care services that allow a flexible response to the diverse needs of the community for these services; to promote the public health, safety, convenience and welfare; and to provide the proper balance between competing land uses and economic and environmental factors.

Section 2: Definitions

The following terms, wherever used in these regulations, shall have the following meanings, unless the context clearly requires otherwise:

- (a) "Authority" shall mean the Boston Redevelopment Authority, a public body politic and corporate duly organized and existing under Massachusetts General Laws Chapter 121B.

- (b) "Child day care center" shall mean any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or pre-school, or known under any other name, which receives children not of common parentage, under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Child day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home, as that term is defined in M.G.L. c.28 Section 9A; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.
- (c) "Child day care facility" shall mean child day care center.
- (d) "Commercial use" shall mean Use Item Nos. 34, 34A, 35, 36, 36A, 37, 37A, 38, 38A, 39, 39A, 40, 41, 42, 43, and 44 of the Boston Zoning Code, Section 8-7, Table A.
- (e) "Child day care provider" shall mean any person or nonprofit organization that meets applicable Massachusetts Office for Children licensing standards required to establish and maintain a child day care center.

- (f) "Developer" shall mean any individual, corporation, business trust, estate trust, partnership, or association, two or more developers having a joint or common interest, or any other legal or commercial entity having a legal or equitable interest in a proposed project subject to the provisions of these regulations, or the authorized agent of any such person or entity, or the successors and assigns of any such person or entity so long as the successors or assigns have a legal or equitable interest in the proposed project.
- (g) "Director" shall mean the Director of the Boston Redevelopment Authority.
- (h) "Family day care facility" shall mean any facility operated on a regular basis for the nonresidential, nonmedical care of elderly adults.
- (i) "Family day care provider" shall mean any person or nonprofit organization that operates a family day care facility.
- (j) "Low-income household" shall mean a household in which the total income of the members at initial occupancy does not exceed fifty percent (50%) of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

- (k) "Moderate-income household" shall mean a household in which the total income of the members at initial occupancy does not exceed eighty percent (80%) of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.
- (l) "Near-site" shall mean a facility which is not located on the premises of the proposed project but is located within the area described in Section 31-3 of the Boston Zoning Code.
- (m) "Off-site" shall mean a facility which is not located on the premises of the proposed project but is in the City of Boston.
- (n) "Office for Children" shall mean the Massachusetts Office for Children.
- (o) "On-site" shall mean a facility which is located on the premises of the proposed project.
- (p) "Proposed project" shall mean the erection or extension of any structure or part thereof, or the change of use of any structure or land, for which the developer is required to obtain a building or use permit.

Section 3: Applicability

These regulations apply to: (a) any proposed project which provides child or family day care facilities pursuant to any requirement or incentive provision of the Boston Zoning Code and (b) any proposed project that includes a commercial use of fifty thousand (50,000) or more square feet and that is subject to a land disposition agreement between the developer and the Boston Redevelopment Authority. The following proposed projects, however, are exempt from the provisions of these regulations:

1. A proposed project of the government of the United States, the Commonwealth of Massachusetts, the City of Boston, or any of their instrumentalities, agencies, or subdivisions;
2. A proposed project that consists only of a house of religious worship owned by, or in trust for the exclusive benefit and use of, any religious organization; and
3. A proposed project which is constructed, installed, or placed in operation, in whole or in part, for the purpose of eliminating industrial waste or reducing such waste to a level of toxicity that is not harmful to fish, fowl, animal life, or aquatic vegetation and thereby abating or preventing the pollution to the waters of the commonwealth. This exemption shall apply only to facilities for the treatment, neutralization or stabilization of industrial waste or industrial air pollution from a point immediately

preceding the point of such treatment, neutralization, or stabilization to the point of disposal.

Section 4: Day Care and Elderly Care Provision Options

A developer of a proposed project subject to the provisions of these regulations shall provide child or family day care facilities in accordance with the provisions of this section.

1. (a) By constructing itself or in conjunction with another developer on-site child day care or family day care facilities having a minimum gross floor area of two percent (2%) of the total new additional or renovated gross floor area of a proposed project of fifty thousand (50,000) or more square feet; such facilities to be made available to a licensed child day care provider or to a family day care provider and in compliance with the affordability provisions of Section 5 of these regulations.
- (b) By constructing itself or in conjunction with another developer off-site child day care and family day care facilities having a minimum gross floor area of two percent (2%) of the total new additional or renovated gross floor area of a proposed project of fifty thousand (50,000) or more square feet; such facilities to be made available to a licensed child day care provider or to a family day care provider and in compliance with the affordability provisions of Section 5 of these regulations.

- (c) By constructing itself or in conjunction with another developer near-site child day care and family day care facilities having a minimum gross floor area of two percent (2%) of the total new additional or renovated gross floor area of a proposed project of fifty thousand (50,000) or more square feet; such facilities to be made available to a licensed child day care provider or to a family day care provider and in compliance with the affordability provisions of Section 5 of these regulations.
 - (d) By contributing to an existing licensed child day care center or family day care facility, for the expansion of such center or facility or for the provision of services by such center or facility at a cost affordable cost to low- and moderate-income households with preference to be given for contributions to nonprofit centers or facilities.
 - (e) By providing a combination of any of paragraph (a) through (d).
2. Any child or family day care facilities or services provided pursuant to this section:
- (a) if the proposed project is provided pursuant to any requirement or incentive provision of the Boston Zoning Code and is less than 50,000 square feet, shall include, on-site, off-site, or near-site, not more than two percent (2%) of the gross floor area of the proposed project or a cash equivalent amount in accordance with paragraph (b) of this subsection and shall be in accordance with applicable zoning regulations;

- (b) if such facilities or services are provided pursuant to Section 1(d) above, shall contribute an amount of money which is equal to cash value equivalent of facilities and services which otherwise would be required by these regulations and any applicable provision of the Boston Zoning Code, such cash value equivalent to be determined from time to time by the Boston Redevelopment Authority based on the average cost of providing such facilities or services.

Section 5: Child Day Care and Family Day Care: Review Criteria

All proposals for option(s) listed in Section 4 shall be evaluated according to the following criteria:

- (a) The extent to which affordable child day care and family day care services are made available to low- and moderate-income households and, in particular, to low- and moderate-income employees who will be working at the proposed project;
- (b) The extent to which affordable child day care and family day care services are made available to residents of the city of Boston; and
- (c) The extent to which the services provided in these facilities have a price structure which reflects the economic need of consumers for these services and are affordable to such consumers low- and moderate-income households.

In order for any proposed project to comply with these regulations, the child and family day care facilities and providers shall comply with the provisions of 102 Code of Massachusetts Regulations 7 (1987).

Section 6: Proposed Approval

The developer shall submit to the Boston Redevelopment Authority its proposal to provide child or family day care facilities or services. The Boston Redevelopment Authority within five (5) days of the submission shall transmit a copy of the proposal to the Boston Women's Commission and to the Mayor's Office of Jobs and Community Services, and each within fifteen (15) days may make a recommendation to the Authority on the proposal. Upon completion of review of the proposal by the Boston Redevelopment Authority, and after public notice and hearing, the Authority shall approve, conditionally approve, or disapprove the proposal and shall promptly notify the developer of its action in writing.

Section 7: Day Care and Elderly Care Provision Agreement

Upon approval of the proposal by the Authority, the Mayor's Office of Jobs and Community Services and the Developer shall enter into an agreement which shall be termed "Child and Family Day Care Provision Agreement" and which shall be in a format prescribed by the Authority and contain such provisions as the Director determines are necessary to ensure the completion of the project in accordance with the developer's proposal as approved by the Authority, including, but not limited to, the following:

- (a) That the facilities be used, for a minimum of ten years, only by family day care providers and by child day care providers who are licensed by the Office for Children under 102 Code of Massachusetts Regulations 7; and
- (b) That the facilities meet the Office for Children requirements set forth in 102 Code of Massachusetts Regulations 7.

Section 7: Severability

If any provision or section of these regulations is held to be invalid by a court of competent jurisdiction, such provision or section shall be deemed to be separate and apart from the remaining provisions or sections of these regulations and such remaining provisions or sections shall continue in full force and effect.

APPENDIX A

Boston Child-Care Statistics
June 10, 1988

C. Distrubution of Family Day-Care Providers in Boston

According to 1988 OFC listing of Boston Licensed family day-care providers, there are over 750 operating in Boston, concentrated in the southwestern sector of the city.

<u>Neighborhood</u>	<u>Number</u>	<u>Percent of Total</u>
Beacon Hill	4	0.5
North End	1	0.1
Charlestown	4	0.5
East Boston	12	1.5
Hyde Park	41	5.3
Mattapan	94	12.2
Roslindale	46	5.9
Fenway	16	2.0
Allston/Brighton	53	6.9
Jamaica Plain	56	7.3
Mission Hill	33	4.3
Dorchester	274	35.7
Roxbury	71	9.2
South End	26	3.3
South Boston	7	0.9
West Roxbury	29	3.7
<u>TOTAL.....</u>	<u>767</u>	

Dorchester, Roxbury, Mattapan and Jamaica Plain together account for 495 providers, or 64.5 percent of the total.

APPENDIX B

Boston Child-Care Statistics
June 10, 1988

Corporate and Institutional Day-Care Providers in Boston

Arthur Anderson	Resources and Referral Program (R&R)
Bank of Boston	Information and Referral Program
Boston City Hospital	On-Site Center
Boston NDEA	R&R
Boston University	On-Site Center
Commonwealth of Massachusetts	On-Site Centers
Children's Centers	
Federal Reserve Bank	R&R
Filene's	Voucher Program
First Church of Christian Scientists	R&R
Flatley Company	On-Site Centers
Gillette	R&R
Hill, Holliday, Connors	On-Site Centers
Cosmopoulos	
John Hancock Mutual Life	Charitable Contribution, R&R
Liberty Mutual	R&R
MASCO Child Care Center	On-Site Center
MASSPORT	R&R
Mercer-Meidinger	R&R
NCR	R&R
New England Life Insurance Co.	R&R
Northeastern University	On-Site Center
St. Elizabeth's Hospital	Near Site Center
Shattuck Hospital	On-Site Center
Shawmut Bank	R&R
State Street Bank	R&R, flexible benefits
Stride Rite Corp	On-Site Center

APPENDIX C

HOUSE No. 53,4

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 6, 1988.

The committee on Human Services and Elderly Affairs, to whom was referred the petition (accompanied by bill, House, No. 4452) of Sandra Graham, other members of the General Court and another for legislation to provide child care linkage, reports recommending that the accompanying bill (House, No. 5374) ought to pass.

For the committee,

PAUL KOLLIOS.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Eight.

AN ACT TO PROVIDE CHILD CARE LINKAGE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after Chapter 40M the following new chapter:
Chapter 40N

Section 1. The general court finds and declares that a serious emergency exists with respect to the shortage of quality and affordable child care in Massachusetts, especially for low and moderate income households. The general court further finds that it is improbable that factors inhibiting the supply of child care will be mitigated by the market place without general governmental intervention.

It is hereby declared the lack of child care is a serious and growing problem, injurious and inimical to the safety, health and welfare of the residents of the commonwealth. The problem constitutes an economic and social liability, and substantially impairs and arrests and sound growth of cities and towns. The economic and social interdependence of different communities and of different areas within a single community necessitates that the problem be addressed by a comprehensive plan in order to achieve a permanent solution.

Section 2. The following words shall have the following meanings when used in this chapter, unless the context clearly requires otherwise:

"Child care linkage advisory board" the statewide board established pursuant to this chapter to advise the executive office of communities and development on all matters related to implementation of this chapter.

"Child care linkage fee", a fee equal to two percent of the rental fee in the development project multiplied by the total square

footage of the development project to be determined and paid into the child care linkage fund each year for ten years.

"Child care linkage fund", the total child care linkage fees collected by a municipality and maintained in a revolving account for disbursement through the child care linkage grants programs.

"Child care linkage grants", grants to be issued by the local linkage board to grant applicants for the expansion of child care services and for a sliding fee scale to help low or moderate income families utilize such additional space.

"Child care provider", a person or non-profit organization that meets applicable office for children licensing standards required to establish and maintain a child care center.

"Community", the city or town in which a development project occurs; if said city or town contains fewer than fifty thousand residents, then "community" may also include cities and towns contiguous to said city or town, at the discretion of the child care linkage advisory board.

"Developer", an applicant seeking a building permit for construction of a project subject to this chapter and such applicant's successors and assigns.

"Development project", any new construction, addition extension, conversion or enlargement, or combination thereof, of any building as defined in section one of chapter one hundred forty-three of the General Laws made to an existing commercial and industrial property as defined by section two A of chapter fifty-nine except for those projects outlined in section thirteen of this chapter.

"Local linkage board", the local board established in municipality to advise the municipality on all matters related to implementation of this chapter and to be responsible for the disbursement of the monies collected through the child care linkage fund pursuant to regulations promulgated by the executive office of communities and development.

"Low or moderate income", families, persons whose gross monthly income is equal to or less than one hundred and fifteen percent of the state median income, as determined by the United States census bureau and adjusted annually by a percentage amount equal to the percentage rise in the United States consumer price index.

3 "Near-site", a location in the same community as and in
 4 reasonable proximity to the development project.

5 "On-site", located on the premises of the development project.

6 "Rental fee", the average collected rent per square foot per year
 7 as determined by the board of assessors in a municipality based
 8 on the actual or assumed market rent of the development project,
 9 whichever is greater.

10 Section 3. The provisions of chapter forty N and Chapter
 11 seven, section 41c, of the General Laws, as inserted by this act
 12 shall take effect six months from the effective date of this act.

13 Section 4. Any developer of a commercial or industrial
 14 development project who seeks a permit to construct, create an
 15 addition, or change the use of a development project equaling at
 16 least 50,000 square feet shall be required to provide one of the
 17 following:

18 a) construction of an on-site or near-site child care center in
 19 accordance with section four of this chapter;

20 b) construction of an on-site or near-site center in consortium
 21 with one or more other developers in accordance with section six
 22 of this chapter;

23 c) contribution of a fee to a child care linkage fund in
 24 accordance with section seven of this chapter;

25 d) a combination of contributing to the construction of a center
 26 and paying a partial fee in accordance with section eight of this
 27 chapter; or

28 e) obtain an exemption from this act in accordance with section
 29 thirteen of this chapter.

30 Section 5. Child care space constructed pursuant to this chap-
 31 ter must meet the following criteria:

32 1) have a minimum gross floor area of two percent of the total
 33 new, additional or renovated square feet of floor area;

34 2) be provided to a licensed child care provider without charge
 35 for rent, utilities, property taxes, building services or any other
 36 charges relating to the physical space; notwithstanding that the child
 37 care provider will be responsible for the other operating costs of the
 38 child care center, including, but not limited to, salaries, supplies and
 39 liability insurance not related to physical structure of the building;
 40 3) be provided for ten years commencing with the opening of

106 the child care center for use by children, or until the developer
 107 demonstrates that there is no longer a need for the child care
 108 center, and

109 4) comply with all applicable office for children licensing
 110 requirements for child care facilities.

111 Enrollment priority for the created or purchased space shall be
 112 granted to:

113 a) low and moderate income employees of the development
 114 project;

115 b) other employees of the development project;

116 c) low and moderate income residents of the community;

117 d) other residents of the community.

118 Section 6. Developers must indicate their intentions for
 119 complying with this act at the time they apply for a building
 120 permit. No developer shall be granted a building permit until plans
 121 for fulfilling the child care linkage requirements have been sub-
 122 mitted to the local building inspector.

123 All developers subject to these requirements must also record
 124 a covenant upon the title deed obligating the developer to fulfill
 125 the selected linkage requirement prior to receiving a certificate of
 126 occupancy. The municipality may not issue a certificate of
 127 occupancy unless a copy of the covenant has been provided to
 128 building inspector and the advisory board.

129 Developers choosing to provide on-site child care space, either
 130 alone or in consortium, shall include such provisions in the
 131 development project plans. Further, no developer choosing to
 132 provide on-site child care space shall be granted a certificate of
 133 occupancy until such space has been completed, in accordance
 134 with all the necessary office for children regulations.

135 Developers choosing to construct near-site space, to contribute
 136 to the linkage fund, or to combine near-site space with a contribu-
 137 tion, must post a bond with the municipal tax collector prior to
 138 the issuance of a building permit. The bond shall be for the esti-
 139 mated full amount of the child care linkage fee over a ten year
 140 period as estimated by the local assessor based on the projected
 141 average rental fee of the building using building of similar use
 142 and location as a guide. Upon completion of the linkage require-
 143 ment for each year, the municipal tax collector shall partially

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144 release the bond posted by the developer in an amount equal to
 145 the imputed value for that year as derived in the original calculation
 146 of the linkage fee.

147 To meet the requirements of this chapter, a municipality may
 148 expend annually up to ten percent of the actual linkage fees for
 149 the current calendar year for administration of the linkage
 150 program.

151 Section 7. For developers opting to participate in a consortium,
 152 the following shall apply: two or more developers may elect
 153 to provide a single child care center on the premises of one of the
 154 development projects, to be known as an on-site consortium, or
 155 in a location within reasonable proximity to all of the development
 156 projects, but not on the same site as any one such project,
 157 subject to approval of the local linkage board, to be known as
 158 a near-site consortium.

159 Developers who fail to open or maintain a complying child care
 160 center within two years after receiving a certificate of occupancy
 161 for the development project shall forfeit the portion of the bond
 162 equal to that year's fee payment and for each year they continue
 163 to fail to meet their linkage obligations.

164 Section 8. For developers choosing to contribute to the linkage
 165 fund, the following shall apply: commencing September 1, one
 166 year after the granting of the certificate of occupancy to a
 167 developer, the municipal tax collector shall collect the first of ten
 168 annual linkage fee payments from the developer. This and each
 169 subsequent fee payment shall be deposited in an interest bearing
 170 bank account dedicated specifically for child care linkage grants
 171 to be distributed by the local linkage board as provided in this
 172 act.

173 Developers who fail to make the linkage fund contribution
 174 payment within thirty days of the payment due date shall forfeit
 175 the portion of the bond equal to that year's fee payment and for
 176 each year that they continue to fail to meet these fee requirements.
 177 The forfeited portion of the bond shall be deposited in the same
 178 account and shall be treated as if it were the child care linkage
 179 fee payment.

180 Section 9. For developers choosing to combine a consortium
 181 with a fee, the following shall apply: child care space must have

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182 a minimum gross floor area of 2,000 square feet and meet the other
 183 requirements of centers as listed in section four. The child care
 184 linkage advisory board shall determine a formula for calculating
 185 the amount of the fee to be paid under this section into the child
 186 care linkage fund in lieu of providing space.

187 Section 10. The executive office of communities and development,
 188 hereafter referred to as the office, is hereby charged with the
 189 overall implementation and administration of this chapter. Its
 190 responsibilities shall include, but not be limited to, developing
 191 forms required for implementation of this chapter, advising
 192 municipalities on this chapter's requirements providing support
 193 staff to the child care linkage advisory board and promulgating
 194 regulations in accordance with chapter 30A of the General Laws
 195 in consultation with the child care linkage advisory board. Said
 196 regulations shall include, but not be limited to, criteria for the
 197 collection, maintenance and disbursement of monies collected
 198 through the child care linkage fund and criteria for discretionary
 199 exemptions. Said regulations are to be consistent with the provisions
 200 of this chapter and are to be forwarded to the local linkage
 201 boards. The funds shall be disbursed by the local linkage boards
 202 as described in section twelve through the grants program
 203 described in section fifteen.

204 Section 11. There shall be within the executive office of
 205 communities and development, but not subject to its control, a
 206 child care linkage advisory board, hereafter referred to as the
 207 advisory board, for the purposes of this chapter. The advisory
 208 board shall consist of sixteen members, as follows: the secretary
 209 of the office, the secretary of the executive office of economic
 210 affairs, the secretary of the executive office of human services, the
 211 secretary of the executive office of labor, the commissioner of the
 212 office for children, the commissioner of the department of social
 213 services; the following individuals to be appointed by the governor:
 214 four members of the public experienced in the field of child care,
 215 no two of whom shall reside in the same social service region as
 216 defined by the department of social services and one of whom shall
 217 be a representative of organized labor; four members of the
 218 business community, two of whom represent the developers of
 219 properties covered by this chapter and two of whom represent

business interests not directly related to the development of property; and two representatives of municipal government.

The terms of each appointive member shall be for two years, provided however, that upon creation of the advisory board the first term shall be for three years for two of the members representing the child care community, one member representing developers of commercial or industrial properties, one member representing the business interest not directly related to the development of property, and one of the representatives of municipal government. None of the appointive members shall serve more than two consecutive full terms.

The advisory board shall elect a chairperson who may vote only in the event of a tie, and other officers as it considers appropriate.

The advisory board shall meet at least six times a year. Said board shall, among other responsibilities, advise the secretary of the office on matters of policy, shall be consulted by the secretary prior to the issuance of rules and regulations, shall grant exemptions to developers under criteria described in section four of this chapter, and shall perform such other duties as the secretary may request. The advisory board shall establish bylaws for its operation.

The appointive members of the advisory board shall receive fifty dollars for each day or portion thereof spent in the discharge of their official duties and shall be reimbursed for their necessary expenses incurred in the discharge of their official duties.

Section 12. There shall be established a local linkage board in a municipality in which a development project occurs subject to the provisions of this chapter. Said board shall be responsible for the disbursement of monies collected through the child care linkage fund to expand child care services in the local community. The board shall consist of two members of the public experienced in the field of child care, one developer of commercial or industrial property, one member of the business community not directly related to the development of property, and one representative of the municipality. The terms of each member shall be for two years, provided however, that upon creation of the board the first term shall be for three members for one member of the child care community, one member of either the development or business

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person not involved in development and the municipal representative. The board shall elect one member to act as chairperson of the board and shall establish bylaws to ensure the timely disbursement of said monies and the efficient working of the board.

Section 13. The criteria to disburse child care linkage funds by the local linkage boards in cooperation with the municipality and consistent with regulations promulgated by the executive office of communities and development shall include, but not be limited to, the following:

a) in every community where a child care linkage fund has been established, the local linkage board shall issue a request for proposal to all state licensed child care center providers based in the community in which the development project is located. Copies shall also be made available through the child care resource and referral agency and local councils for children serving the community in which the development occurs;

b) only projects, programs, or capital improvements that will help to create a new child care center, to increase the number of children served at an existing center, or to establish a sliding scale to help low or moderate income families utilize the additional space created shall be considered eligible to funding;

c) direct subsidies for salaries of providers of child care centers are not permissible through this grants program;

d) the local linkage board may, when reviewing grant proposals, see the non-binding recommendations of the developer;

e) the local linkage board may issue a request for proposal more than one time per year as long as monies are available in the fund.

For ten years following creation of new child care centers slots through the funded project, the additional spaces created shall be provided according to the following priority:

i) low- and moderate-income employees working at the development project;

ii) other employees working at the development project;

iii) low- and moderate-income families from the community;

iv) other families from the community.

295 Section 14. The following development projects shall be
 296 exempt from the provisions of this chapter:

297 a) development projects of the government of the United
 298 States, the Commonwealth of Massachusetts, and of the
 299 municipalities of the Commonwealth and any of their instru-
 300 mentalities, agencies, or subdivisions;

301 b) development of houses of religious worship owned by, or
 302 in trust for the exclusive benefit and use of any religious
 303 organization;

304 c) development projects which are constructed, installed, or
 305 placed in operation, in whole or in part for the purpose of
 306 eliminating industrial waste or reducing such waste to a level of
 307 toxicity that is not harmful to fish, fowl, animal life or aquatic
 308 vegetation and thereby abating or preventing the pollution to the
 309 waters of the commonwealth, this exemption shall apply to
 310 facilities for the treatment, neutralization or stabilization of
 311 industrial waste or industrial air pollution from a point
 312 immediately preceding the point of such treatment, neutralization
 313 or stabilization to the point of disposal;

314 d) development projects for the benefit of incorporated
 315 organizations of veterans of any war in which the United States
 316 has been engaged and if such development is to be actually used
 317 and occupied by such association; and

318 e) any development for a regiment, corps, company or other
 319 organized unit of the volunteer militia and used exclusively for
 320 military purposes.

321 A developer may be granted an exemption from this chapter
 322 if the advisory board determines that the project does not create
 323 a need for new child care services in the community. Exemptions
 324 shall be granted in following circumstances:

325 a) The developer demonstrates that the development project
 326 will employ fewer than twenty individuals during any single eight-
 327 hour working shift and will continue to do so for the reasonably
 328 foreseeable future.

329 b) The developer demonstrates that the development project
 330 already is served by an on- or near-site child care center that has
 331 sufficient capacity to serve all additional employees working in
 332 the new space.

333 c) The developer demonstrates that sufficient excess child care

334 capacity exists in the community presently, and will continue to
 335 exist for the reasonably foreseeable future, to meet the new
 336 demand for child care created by the development project.

337 A developer may also be granted an exemption pursuant to
 338 regulations promulgated by the executive office of communities
 339 and development. A developer must apply in writing to the
 340 advisory board for said exemptions. The board may request addi-
 341 tional documentation from the developer, and may seek data or
 342 other information from other community services, including but
 343 not limited to, the local linkage board, the area council for
 344 children and the child care resource and referral agency serving
 345 the community.

346 Section 15. In addition to any other remedies provided herein,
 347 any developer who fails to comply with this chapter shall be
 348 punishable by a fine of two hundred dollars per violation per day
 349 payable into the local municipality's child care linkage fund. If
 350 sixty days have elapsed from the date said fine begins to
 351 accumulate and the developer has failed to remedy the violation
 352 or to pay the fine, the attorney general shall initiate proceedings
 353 in superior court against the developer on behalf of the common-
 354 wealth to restrain further violations, to enforce the fine and to
 355 enforce any other provisions of this act.

1 SECTION 2. Chapter sixty-three of the General Laws is
 2 hereby amended by inserting after 38K the following section:

3 Section 38L. (a) in determining the net income subject to tax
 4 under this chapter a domestic or foreign business corporation, at
 5 its election may deduct the additional expenses incurred for the
 6 construction, reconstruction, erection, or improvement of a child
 7 care facility in the Commonwealth that results in an increase in
 8 the number of children served;

9 (b) such deduction shall be allowed only on the condition that
 10 such facilities have been licensed by the office for children and
 11 the net income for the taxable year shall succeed years be
 12 computed without any exemption, credit or depreciation for such
 13 expenditures or for depreciation of the property other than the
 14 depreciation allowed by this section;

15 (c) if expenditures with respect to child care facilities have been
 16 deducted as provided herein and if within ten years from the end

17 of the taxable year in which such deduction was allowed such
18 facility is used for any other purpose than child care, the
19 corporation shall report such change of use in its return for the
20 first taxable year during which it occurs, and the commissioner
21 may recompute the tax for the year or years for which such
22 deduction was allowed and may assess any additional tax resulting
23 from such recomputation within the period of assessment
24 applicable to such return.

1 SECTION 3. Chapter seven of the General Laws is amended
2 by adding after section 41B the following:

3 Section 41C. The director of programming in consultation with
4 the child care linkage advisory board established in chapter 40N
5 of the General Laws, shall require that any plan for new
6 construction or major renovation not limited to repairs due to
7 deferred maintenance and subject to the provisions of section 40B
8 of chapter seven include a child care center in all circumstances
9 but the following:

- 10 1) the health and safety of the children would be jeopardized;
11 2) office for children regulations cannot be met; or
12 3) the director of programming determines there is insufficient
13 need for a child care center.

14 Any child care space provided in a state building shall be made
15 available to a licensed child care provider without charge for rent,
16 utilities, property taxes, building services or other charges.

1 SECTION 4. Commencing one year after the effective date of
2 this chapter and annually thereafter, the executive office of
3 communities and development shall file a report with the general
4 court detailing the status of compliance with the chapter, the
5 effectiveness of the chapter in mitigating the commonwealth's
6 shortage of child care facilities, the impact of this chapter on the
7 amount of child care facilities available to low and moderate
8 income households, the needs for continuation of the require-
9 ments of this chapter, and further recommendations for legislative
10 action which may effectuate the policies of this act.

